IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 293 of 2005.
Reserved on 23-4-2007.

Date of Decision: 4. 05. 2007

The Joginder Nagar Tehsil Co-operative Marketing and Consumer Union Ltd.

Petitioner.

Versus

Presiding Judge, Labour Court and another. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : Mr. Vikas Rathore, Advocate.

For the respondent No. No. 2. : Mr. Rahul Mahajan, Advocate

SURINDER SINGH, J.

The Petitioner Society has assailed the award passed against it in Reference No. 52 of 1999 (RBT 368 of 2004) passed on 17-12-2004 by the Labour Court-cum- Industrial Tribunal Dharamshala, camp at Mandi on the following reference received for adjudication from the appropriate Government:

> "Whether the termination of services of Shri Jagdish Chand, Sales-Man by the Sachiv, The Joginder Nagar Tehsil Co-operative Marketing and Consumer Union Ltd., Joginder Nagar, District Mandi, H.P.w.e.f. 31.1.95 without any notice, charge-sheet, enquiry

[1] Whether reporters of the Local papers are allowed to see the judgment?

and without compliance of Section 25 (F) of the Industrial Disptues Act, 1947, is legal and justified. If not, to what relief of consequential benefits including back wages, seniority and amount of compensation, Shri Jagdish Chand is entitled?"

The admitted facts are that the respondent No.2 herein, was appointed as Salesman in the Essential Commodities Depot of the Petitioner Society in August, 1986. He remained posted as a Salesman in Tikkan Depot till June, 1988. The services of the said respondent were terminated in June 1988 on the basis of some embezzlement committed in the aforesaid Depot of the Society. Thereafter, he took the matter to the Labour Court at Shimla. The Labour Court had set aside the termination order. His seniority was restored from the back date but in lieu of his back wages, he was awarded compensation to the tune of rupees 5000/-. Consequent upon the said order, the respondent No.2 joined at the said place as a salesman of the petitioner Society.

It is alleged that even thereafter, the respondent No.2 did not mend his ways. He started mis-appropriating the funds and was again found guilty of embezzlement and also mis-appropriated the funds and commodities of the Society of more than 50,000/- till December, 1994. The inquiry was held into the allegations against him. A show cause notice was issued. The charge-sheet was framed. The said respondent filed his reply. A fact finding inquiry Committee was appointed. The respondent was found guilty and his services were once again terminated vide order dated 31-1-1995. Against this order, he filed O.A. No. 963 of 1997 before the H.P. Administrative Tribunal at Shimla challenging the aforesaid order which was dismissed on 6-11-1997 being not maintainable as the alternative remedy was available to him. The relevant para of the order is reproduced below:

"……..In as much as the applicant did not avail of the remedies of appeal to the Registrar, available to him under the by laws. Further it is pointed out that dispute in question is a dispute between the employees and the Society and falls under Section 72© of the Himachal Pradesh Co-operative Societies Act, 1968. Rule 22 of the rules of the employees of the Joginder Nagar Tehsil Co-operative Marketing and consumer Union Ltd. Lays down as under:-

A member of service union whom any penalty is imposed by the Board may, within 30 days from the date of communication of the order, of the Board, appeal to the Registrar. The decision of the Registrar shall be final and binding on the parties.

3. From the perusal of the contents of the application I find that there is no averment in the application with respect to the alternative remedy having been availed of by the applicant. That being so the application is not maintainable the same is dismissed on this ground.

Dated November 8, 1997. Sd/- D.P.Sood),
Chairman"

The respondent instead of availing any relief under the H.P. Cooperative Societies Act, filed his claim on the basis of which the above reference was made to the Labour Court by the appropriate Govt. for its determination . The Labour Court, in order to answer the reference, had framed the following issues:

1. Whether this court has jurisdiction to entertain this petition? OPP
2. Whether services of the petitioner were unauthorisedly and illegally terminated, as alleged? If so, its effect? OPP.
3. Relief.

Upon going through the evidence and hearing the parties, the Labour Court had decided Issue No.1 and 2 in favour of respondent No.2 , consequently the following relief was granted :-

> "31. In view of my findings on issue No.1 and 2 as referred to herein above, the termination of the petitioner from service is liable to be set aside. The inquiry Report Ex. RW1/C, the resolution of the respondent Ext. RW1/D dated 30.1.95 and termination order of the petitioner Ex. PF dated 31.1.95 stands quashed being illegal, in-operative and un-sustainable. Since the petitioner has illegally terminated without holding proper and full fledged inquiry and also in violation of the mandatory provisions of Industrial Disputes Act, the petitioner is entitled for his re-instatement in the original service on the same terms and conditions in which he was working earlier, with all consequential benefits including seniority and payment of back wages. Specially in the circumstances where the respondent firstly got registered a case FIR under Section 408 IPC against the petitioner and got the same cancelled by filing an affidavit, the record reveals that the petitioner was taking a stand that it was not a case of embezzlement and it was case of shortgages etc and this stand of the petitioner was established in the police investigation on the basis of which F.I.R. lodged against the petitioner was cancelled. The inquiry conducted by the respondent against the petitioner also reveals that the respondent was in hurry to remove the petitioner from the service without affording him proper and reasonable opportunity to defend himself as per the basic principles of natural justice. Under these circumstances, the petitioner is not only held to be entitled for full back-wages but also entitled for litigation expenses to the tune of Rs. 5000/-".

The petitioner Society, inter alia, challenged the order of the Labour Court on the ground that the impugned order is illegal, unjust and arbitrary and the Labour Court has erred by holding the present lis as Industrial Dispute in view of Section 72 (c) of the H.P. Cooperative Societies Act, 1968, which provides a complete mechanism for settlement of the dispute inter-se Society and its agent or employee and no other Court has the jurisdiction to entertain any suit or proceedings in respect of such dispute. It is also contended that the Labour Court has ignored the relevant service rules governing the employees of the Petitioner's Society which empowers the appointing authority to dismiss any employee for grave misconduct, in-subordination, fraud and misappropriation of union funds or goods without notice.

Contra, the respondent No.2 has supported the impugned order and argued that petitioner Society is in the habit of leveling false allegations and the enquiry against him was rightly held to be contrary to the provisions of natural justice.

We have heard the learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner Society has mainly laid stress on two points before us, firstly, that the Labour Court has no jurisdiction in view of Section 72 (C) of the H.P. Cooperative Societies Act,1968 to hear and determine the matter, secondly, the impugned order is wrong and illegal on the ground that the petitioner Society had afforded reasonable opportunity to the respondent No.2, he had admitted his guilt of embezzlement but denied shortage of stocks for which a fact finding inquiry was held and FIR was also lodged but the Labour Court

has set aside the orders of his termination and the respondent No.2 awarded full back wages along with litigation expenses as aforesaid.

In so far as the first point raised regarding the jurisdiction of Labour Court under the Industrial Dispute Act is concerned, it stands already covered in the judgment passed by this Court in CWP No. 906 of 2005, The Palampur Cooperative Marketing and Consumer Federation Limited –v- State of H.P. and others, decided on 9.4.2007 whereby in similar circumstances, we have held that the Labour Court has the power and authority to decide the reference. The relevant para of the said judgment is reproduced below:-

> "In fact this question is no longer res integra. A Bench of the Apex Court in Morinda Co Operative Sugar Mills Ltd. –v- Morinda Co operative Sugar Mills Workers' Union (2006) 6 SCC 80 has dealt with virtually an identical question in relation to the Punjab Cooperative Societies Act. Section 55 of the said Act is virtually identical to Section 72 of the H.P. Cooperative Societies Act. Placing reliance on the earlier judgment in Cooperative Central Bank Ltd. Case supra, the apex court held that the word business has to be equated with the actual trading in commerce and other business activity and that a dispute relating to the services conditions of the workman employed by the society cannot be held to be disputed touching the business of the society.
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> Keeping in view the aforesaid law, we are of the considered view that the Industrial Tribunal had the authority, power and jurisdiction to entertain and decide the reference made to it. The question raised by the workmen was that their services had been terminated without following the provisions of Section 25-F of the I.D. Act. The workmen complained of violation of the protection granted to them under

> Chapter 5-A of the I.D. Act. The apex Court has clearly held that this is a matter which can only be decided by the tribunals constituted under the I.D.Act. In view of the law laid down by the apex court, in our considered opinion, the contention of the learned counsel for the petitioner cannot be accepted. We are of the considered view that the learned Tribunal had the power and authority to decide reference made to it".

Admittedly, the respondent no.2 was a workman under the petitioner Society thus, in view of the above, we hold that the Labour Court has the jurisdiction and authority to decide the reference made to it by the appropriate Government under the Industrial Disputes Act.

As far as the second question of termination of services of the respondent No.2 is concerned, to scrutinize the procedure adopted by the petitioner Society, we had called for the record of the Labour Court vide order dated 1.12.2006 passed by this Court, in order to appreciate the contention raised by the parties. On perusal of the record, we have found that earlier to the charge sheet, the respondent was given a show cause notice Ex. RA dated 24.11.94 to explain this position and thereafter he was charge-sheeted by the petitioner society vide memo No. 2203 dated 3-12-1994 for embezzlement and misappropriation of the amount and the food grains. The charge sheet was received by the respondent Jagdish Chand on 5-12-1994. He had filed his reply on 20-12-1994. In short, the charges and his reply were as under:

(i) The first allegation against him was that the respondent embezzled/mis-appropriated an amount of Rs. 1869.39 paise on 31.3.92.In reply, the respondent Jagdish Chand in his reply admitted to have deposited the said amount.

ii) The second allegation was that during the year 1993-94 he had misappropriated an amount of Rs.5611.65 paise and there was also balance of Rs. 2600/- standing against his name during the year 1992-93 and after adjusting past payments, the respondent was still having against his name an amount of Rs. 2881.03 paise recoverable from him. In reply, the workman stated that he had deposited this amount.

iii) The third allegation against respondent was that he had embezzled an amount of Rs. 31,376.04, paise out of which he had only deposited Rs. 4973.03. The balance of Rs. 31,184.04 as on 31.3.94 was not deposited. In reply, he has admitted to have deposited only Rs.10,000/- but did not say about the balance amount.

iv) The fourth allegation is that the respondent had misappropriated the amount of Rs. 41,539.00 w.e.f. 1.4.94 to 17.11.94 out of which he only deposited the amount of Rs.10,000/- and on 17.11.94, he had sold food articles of the Federation amounting to Rs. 62,723.04 but did not deposit this amount. In reply to it, he has stated that out of Rs. 41539/-, the food articles worth Rs. 3440/- got destroyed which could even be inspected on the spot but did not offer any explanation qua the balance.

v) In reply to paras 6 and 7 of the charge-sheet, he has averred that he has Rs. 6000/- in his GPF with the Federation plus Rs.10,000/- from his salary could be deducted and balance amount would be paid by him in installments and also requested to reduce the balance outstanding against him because the food articles got destroyed due to leakage of the roof.

On receiving the reply aforesaid to the above charge sheet, the petitioner Society considered the same in a meeting held on 25.12.94, vide resolution No.3 (Ext. RB) a Committee was constituted to sift the allegations. Committee submitted its report Ext. RW1/C in detail finding

respondent guilty, after hearing the respondent No.2 and recording the statements of witnesses. The said report was considered and accepted in the meeting held on 31.1.95 by the Society vide resolution No. RW1/D, and the respondent was ordered to be terminated. Thus he was dis-engaged.

Thereafter, the respondent did not object his termination but made a representation Ext. RL to re-engage him in service on the ground that he had deposited Rs. 16,318/- in the in the Federation and if he is taken back, he would deposit an amount of Rs. 30,000/- and balance in installments. The Board of Directors accepted his request on the condition that the respondent shall repay the balance and further mortgage the land worth Rs one lac as a security. Some amount is stated to have been deposited by him but the land was not mortgaged. Therefore, he was not re-engaged and was so informed vide Annexure-A5 dated 6.5.1995. But again, vide letter dated 5.6.95, he again requested that since he had got the land attached, in the name of the Federation, he may be given appointment but the Federation took a decision that he cannot be taken back till FIR is cancelled. The FIR was also got cancelled on 18.3.1997 (Annexure-A8). Then again he unsuccessfully represented for his re-engagement. Thereafter, he had filed his claim before the Labour Officer and a reference aforesaid was made.

On the scrutiny of the record we have found that the respondent No.2 did not at all deny the charges leveled against him. Virtually he admitted the guilt and prayed to liquidate the amount. Contra, we have found that the petitioner Society had given him a fair and reasonable opportunity to defend himself. The principles of natural justice were

adhered to. Thus, in view of his admission and subsequent conduct, no detailed enquiry was required to be conducted.

Therefore, in these circumstances, we are unable to persuade ourselves with the findings arrived at by the learned Labour Court qua Issue No.2 above. Thus while upholding the jurisdiction of the Labour Court to decide the reference, we hereby set aside the award and uphold the retrenchment of the respondent being legally correct. The matter is accordingly disposed of. The record of Labour Court be returned.

CMPs No.586 of 2005 & 1493 of 2005.

No orders in view of disposal of the main writ petition. The applications are disposed of.

(Deepak Gupta), J.

(Surinder Singh), J.

May 4, 2007.
(BM)